FILE COPY

SEP 28 1972

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-521

IRISH NORTHERN AID COMMITTEE,
Petitioner,

vs.

ATTORNEY GENERAL OF THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

VICTOR RABINOWITZ
30 East 42nd Street
New York, New York 10017
Attorney for Petitioner

Of Counsel:

K. RANDLETT WALSTER
30 East 42nd Street
New York, New York

FRANK DURKAN
50 Broad Street
New York, New York

INDEX

	PAGE
Table of Authorities	ii
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statutes and Regulations Involved	3
Statement of the Case	4
Reasons for Granting the Writ	
1. The Preliminary Injunction Ordering Disclosure Of All Petitioner's Books And Records, Including The Names Of Its Supporters, Violates The First Amendment To The United States Constitution	7
2. The Unlimited Compulsory Disclosure Ordered By The District Court Violates The Fourth Amendment Rights Of The Petitioner	11
Conclusion	13
Appendix	
A. Order Of The Court Of Appeals	1a
B. Opinion And Order Of The District Court	3a

Table of Authorities

Cases	Page
Barenblatt v. United States, 360 U.S. 109	6, 7, 8
Bates v. City of Little Rock, 361 U.S. 516	7
Camara v. Municipal Court, 387 U.S. 523	12
Communist Party v. Subversive Activities Control Board, 367 U.S. 1	6, 7
Elfbrandt v. Russell, 384 U.S. 11	9
Freedman v. Maryland, 380 U.S. 51	9
Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539	7, 8, 9
Laird v. Tatum ... U.S. ..., 40 USLW 4850	10
Lamont v. Postmaster General, 381 U.S. 301	7
Levinson v. Attorney General, 321 F. Supp. 984 (D. Pa. 1970)	11
Louisiana *ex rel.* Gremillion v. N.A.A.C.P., 366 U.S. 293	7
Martin v. City of Struthers, 319 U.S. 141	9
N.A.A.C.P. v. Alabama, 357 U.S. 449	7, 9, 10
Pollard v. Roberts, 283 F. Supp. 248 (E.D. Ark. 1968), *aff'd per curiam* 393 U.S. 14	7, 11
See v. City of Seattle, 387 U.S. 541	12
Stark v. Connally, ... F. Supp. ..., 41 USLW 2132 (D. Cal. Sept. 11, 1972)	12
United States v. Caldwell, ... U.S. ..., 40 USLW 5025	10
United States v. Kyriaco, 326 F. Supp. 1184 (D. Cal. 1971)	13
United States v. O'Conner, 118 F. Supp. 248 (D. Mass. 1953)	13
United States v. Powell, 379 U.S. 48	12

PAGE

United States v. Roundtree, 420 F. 2d 845 (5th Cir. 1969) 12

United States v. Weingarden, 333 F. Supp. 474 (D. Mich. 1971) 13

Uphaus v. Wyman, 360 U.S. 7 .....6, 7, 8, 11

CONSTITUTION, STATUTES AND REGULATIONS

Constitution:

First Amendment 6, 7, 10, 11,

Fourth Amendment 6, 12

Statutes:

Foreign Agents Registration Act, 22 U.S.C. § 611 *et seq.* 1, 3, 4, 5, 9

Regulations:

28 C.F.R. § 5.201(e) 3

28 C.F.R. § 5.500(a)(4) 4

MISCELLANEOUS

Senate Report (Committee on Foreign Relations) No. 143, April 1, 1965 ..... 8, 9

IN THE

Supreme Court of the United States

October Term, 1972

No.

IRISH NORTHERN AID COMMITTEE,

Petitioner,

VS.

ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Second Circuit entered on August 24, 1972, affirming the order of the United States District Court for the Southern District of New York which granted a preliminary injunction directing petitioner to comply with the provisions of the Foreign Agents Registration Act (22 U.S.C. § 611 *et seq.*) and produce its books and records for inspection by officials charged with enforcement of the Act.

Judgment and Opinion of the Court Below

The order of the United States Court of Appeals for the Second Circuit affirming the order of the District Court was entered August 24, 1972, without opinion, and is set forth in Appendix A. The opinion of the United States District Court for the Southern District of New York ordering that a preliminary injunction issue was filed August 7, 1972, and is not reported, but is set forth in Appendix B.

Jurisdiction

The order of the United States Court of Appeals for the Second Circuit was entered on August 24, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

1. Does the First Amendment to the United States Constitution protect from government disclosure the names of contributors to a controversial organization and the mailing list of such an organization when there is no substantial relation between the need for disclosure and any compelling and overriding governmental purpose?

2. Does the Fourth Amendment to the United States Constitution protect the books and records of an organization from unlimited disclosure when no particular purpose has been advanced for their inspection and circumstances suggest the existence of an improper purpose?

Statutes and Regulations Involved

22 U.S.C. § 615

Every agent of a foreign principal registered under this Act shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions of this Act, in accordance with such business and accounting practices, as the Attorney General having due regard for the national security and the public interest, may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this Act and shall preserve the same for a period of three years following the termination of such status. Until regulations are in effect under this section every agent of a foreign principal shall keep books of account and shall preserve all written records with respect to his activities. Such books and records shall be open at all reasonable times to the inspection of any official charged with the enforcement of this Act. It shall be unlawful for any person willfully to conceal, destroy, obliterate, mutilate, or falsify, or to attempt to conceal, destroy, obliterate, mutilate, or falsify, or to cause to be concealed, destroyed, obliterated, mutilated, or falsified, any books or records required to be kept under the provisions of this section.

28 C.F.R. § 5.201(e)

Whenever a registrant, within the United States receives or collects contributions, loans, money, or other things of value, as part of a fund-raising campaign, for or in the interests of his foreign principal, he shall file as Exhibit D a statement so captioned setting forth the amount of money or the value of the thing received or collected, the names and addresses of the persons from whom such money or thing of value was received or collected, and the amount of money or a description of the thing of value transmitted to

the foreign principal as well as the manner and time of such transmission.

28 C.F.R. § 5.500(a)

A registrant shall keep and preserve in accordance with the provisions of section 5 of this Act the following books and records:

• • •

(4) Records containing the names and addresses of persons to whom political propaganda has been transmitted.

Statement of the Case

The petitioner, Irish Northern Aid Committee, was organized in order to help alleviate the suffering and hardship resulting from the ongoing civil strife in Northern Ireland. It has collected money and clothing and sent these contributions to aid the needy in that country (Flannery affidavit dated July 13, 1972).[1]

The Department of Justice required the Committee to register under the Foreign Agents Registration Act (22 U.S.C. § 611 *et seq.*). On January 29, 1971 the Committee registered, under protest, as the agent of the Northern Aid Committee of Belfast (Flannery affidavit dated July 13, 1972; Harris affidavit dated July 18, 1972) and subsequently filed periodic supplemental statements.

On March 28, 1972, the Justice Department requested additional information from the Committee, including the filing of "Exhibit D", a statement of expenditures and contributions (with names and addresses of contributors); a supplemental registration statement if the Committee was acting as a representative for the Provisional Irish Republican Army; and copies of political propaganda (Harris affidavit dated July 18, 1972).

---

[1] References are to portions of the Record of the District Court, copies of which have been submitted to this Court.

The Committee's counsel, Frank Durkan, responded April 17, 1972 stating that the requested information would be forthcoming. Shortly thereafter, a statement of expenditures was submitted to the Department of Justice (Harris affidavit dated July 18, 1972).

On May 15, 1972, the Justice Department reiterated its request for information regarding contributors and the Committee's supposed representation of the Provisional Irish Republican Army (Harris affidavit dated July 18, 1972).

On June 12, 1972, three officials of the Committee were served with subpoenas to appear at a grand jury investigation in Fort Worth, inquiring into, *inter alia*, violations of the Foreign Agents Registration Act. However, these subpoenas were cancelled prior to the date on which the officers were to appear, leading them to believe that they were the targets of the investigation. Other rank and file members of the Committee responded to the subpoenas and were offered immunity; however they have refused to testify for reasons now being litigated (Durkan, Flannery and McCarthy affidavits all dated July 13, 1972).

At approximately the same time, Acting Assistant Attorney General A. William Olson who had approved the grant of immunity to one of the Committee members subpoenaed, wrote to the Committee demanding inspection of its books and records (Durkan affidavit dated July 13, 1972). After the Committee's refusal to permit such an inspection, the Attorney General commenced an action pursuant to 22 U.S.C. § 618(f) seeking preliminary and permanent injunctive relief to require the Committee to produce all of its books and records for inspection.

The Committe opposed the relief requested on the grounds that the government was seeking disclosure of evidence for use in a criminal proceeding; that an order requiring disclosure of *all* books and records would violate

the Fourth Amendment; and that an order requiring disclosure of the names of the Committee's members or contributors would violate the First Amendment. Suggestions for limiting an order requiring inspection were also presented (Petitioner's Brief in Opposition to Application for Injunction dated July 13, 1972).

On August 7, 1972, District Judge Arnold Bauman granted a preliminary injunction ordering the Committee to produce for inspection all its books and records without limitation.[2] Judge Bauman relied primarily on *Uphaus* v. *Wyman*, 360 U.S. 72; *Barenblatt* v. *United States*, 360 U.S. 109; and *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, in requiring disclosure of the names of contributors. (App. B p. 9a *et seq.*) A notice of appeal from this order was filed August 14, 1972.

On August 18, 1972 the Second Circuit granted a stay pending appeal, ordering briefs filed by August 22nd, and the appeal heard August 23rd. August 24, 1972, the Court of Appeals affirmed the District Court order.

On September 21, 1972, the Committee sought a stay pending petition for certiorari from Mr. Justice Marshall. At a hearing in chambers, Justice Marshall stated he would refer the application for a stay to the entire Court. Petitioner has promptly filed this petition for certiorari in order to expedite full consideration of the application for a stay.

---

[2] The preliminary injunction granted below would require disclosure of the names and addresses of contributors as well as the identity of those on petitioner's mailing list. We have no idea why the government would wish to inspect the names and addresses of those on petitioner's mailing list, but because the injunction requires the production of all the Committee's books and records, and because the regulations require such a mailing list to be maintained and available for inspection, unless the injunction is set aside or appropriately limited, the government will have access to that document for whatever purposes it may have.

Reasons for Granting the Writ

1. The Preliminary Injunction Ordering Disclosure Of All Petitioner's Books And Records, Including The Names Of Its Supporters, Violates The First Amendment To The United States Constitution.

The compulsory disclosure of lists of names of individuals associated with an organization required to register under the Foreign Agents Registration Act, raises an important constitutional question which has not yet been presented to this Court.

The decisions of this Court respecting disclosure of lists of names of individuals associated with organizations are split into two divergent lines of authority: those cases dealing with membership in subversive organizations in which disclosure was mandated by a sharply divided court, for example, *Uphaus* v. *Wyman*, *supra; Barenblatt* v. *United States, supra;* and *Communist Party* v. *Subversive Activities Control Board, supra;* and the more recent cases in which lists of members and contributors[3] were protected from disclosure, e.g. *N.A.A.C.P.* v. *Alabama,* 357 U.S. 449; *Bates* v. *City of Little Rock,* 361 U.S. 516; *Gibson* v. *Florida Legislative Investigation Committee,* 372 U.S. 539; *Louisiana ex rel. Gremillion* v. *N.A.A.C.P.,* 366 U.S. 293; *Pollard* v. *Roberts,* 283 F. Supp. 248 (D. Ark. 1968) *aff'd per curiam* 393 U.S. 14.

The divergence in the two lines of cases is the result of the well-established legislative determination that the Com-

---

[3] Although lists of members and contributors have been protected, petitioner is aware of no cases which deal with disclosure of mailing lists. However it must be kept in mind that in an organization like the Irish Northern Aid Committee, the list of contributors and the mailing list are substantially identical to a membership list. Moreover disclosure of a mailing list would present an additional First Amendment freedom of expression issue, *Cf. Lamont* v. *Postmaster General,* 381 U.S. 301.

munist Party and related claimed subversive organizations presented an immediate threat to this country's national security, and that investigation into organizational affiliation was necessary for the self-preservation of our society. *Uphaus* v. *Wyman, supra,* at 80; *Barenblatt* v. *United States, supra,* at 128. Justice Harlan stated that it was on this premise that the Court "has upheld federal legislation aimed at the Communist problem which in a different context would certainly have raised constitutional problems of the gravest character". *Barenblatt* v. *United States, supra,* at 128.

In contrast, there has been no legislative determination that organizations registered under the Foreign Agents Registration Act or their contributors constitute anything like the sort of extreme threat found to exist in the *Barenblatt* line of cases. In fact, the legislative history surrounding the amendment of the Foreign Agents Registration Act discloses that it now has two fairly limited purposes: (1) to disclose to government agencies and officials the existence of foreign interests where attempts are made to influence governmental decisions and policies, and (2) to disclose the source of foreign propaganda which is made available to the public at large. Senate Report (Committee on Foreign Relations) No. 143, April 1, 1965. Thus, the thrust of the Act is to identify sources of influence rather than to root out subversive and hostile forces. Whether the former governmental interest can be characterized as "overriding and compelling" is an issue which is yet to be resolved, and consequently, the constitutional problem raised in this case by disclosure of association is not concluded by the rule of the *Barenblatt* line of cases.

Instead, the Court must follow the analysis prescribed in *Gibson* v. *Florida Legislative Investigation Committee, supra*: the government must convincingly show a *substantial* relationship between an overriding and compelling governmental purpose and the inquiry into organizational

affiliation. However, the government has not yet been required to demonstrate such a substantial nexus, so that even if we were to concede here that the purposes of the Act are of an overriding and compelling nature, disclosure under the rule of *Gibson* cannot be required.[4]

Insistence on disclosure is further weakened by the fact that the Act itself does not require the identification of contributors to a registered agent of a foreign principal.[5] Thus, not only do the purposes of the Act disclose a government interest substantially less significant than its interest in the area of outright subversion, but Congress apparently did not consider the information demanded here to be essential to the enforcement of the Act and the accomplishment of its purposes.

Counter-balanced against the weight to be given to the government interest in disclosure is the concomitant infringement of the right of freedom of association.

The record discloses that the Irish Northern Aid Committee is largely composed of Irish-Americans vitally concerned with the civil strife in Northern Ireland. The tragic political situation there grows out of religious, political and historical issues of the most intense kind. Feelings

---

[4] Moreover such a showing of the specific government purpose and its relation to this particular demand is necessary to enable the Court to determine whether justifiable governmental goals might not be achieved by a more narrow means having a less significant impact on First Amendment rights. *Cf. Freedman* v. *Maryland*, 380 U.S. 51; *N.A.A.C.P.* v. *Alabama, supra; Martin* v. *City of Struthers*, 319 U.S. 141; *Elfbrandt* v. *Russell*, 384 U.S. 11.

[5] Section 612(a)(7) of the Act might be read to require such information; however, the legislative history of the 1966 Amendment to the Act states that subsection 7 would "require information with respect to those persons, not themselves foreign principals, who are so related to a foreign principal that their agents, when engaged in political activities in the interests of the principal are required to register under the Act." (Senate Report No. 143, at p. 10).

run high with respect to the Irish question not only in Northern Ireland but in the United States as well.

Moral or financial support of any of the factions in that dispute involves association and identification with a particularly controversial group, and, as a result, disclosure of the names of those who support the Committee would markedly burden their First Amendment right to freedom of association. *Cf. Laird* v. *Tatum*, ... U.S. ..... (June 26, 1972, 40 USLW 4850). Consequently, in view of the absence of any compelling and overriding government purpose, any such disclosure must not be allowed.

In the analogous situation regarding the disclosure of membership lists of the N.A.A.C.P., Mr. Justice Harlan said:

> "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective ... restraint of freedom of association. . . . This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *N.A.A.C.P.* v. *Alabama, supra*, at 462.

The freedom from compulsory disclosure and consequent protection of the right of association is an interest which can be asserted not only in the case of public disclosure (which the government presumably seeks here regarding the names of contributors) but also in those cases in which the government seeks the information for its own purposes.

The extent to which protected information will be dispersed is not the criteria for determining whether disclosure of such information should be compelled. *Cf. United States* v. *Caldwell*, ... U.S. ..... (June 29, 1972, 40 USLW 5025) in which disclosure to a grand jury was ordered only after

the Court's determination that the *Gibson* test had been met. See also *Pollard* v. *Roberts, supra,* where disclosure of contributors to the Arkansas Republican Party was not ordered in connection with a grand jury investigation into election abuses.[6]

The facts of this particular case, and the novelty of the issue here raised under the Foreign Agents Registration Act require a determination by this Court as to the principles to be applied in safeguarding the First Amendment right to freedom of association. As Justice Brennan stated in his dissenting opinion in *Uphaus* v. *Wyman, supra*:

> "[A]ny line other than a universal subordination of free expression and association to the asserted interests of the State in investigation and exposure will be difficult of definition; but this Court has rightly turned its back on the alternative of universal subordination of protected interests, and we must define rights in this area the best we can. The problem is one in its nature calling for traditional case-by-case development of principles in the various permutations of circumstances where the conflict may appear. But guidelines must be marked out by the courts." at p. 85.

2. The Unlimited Compulsory Disclosure Ordered By The District Court Violates The Fourth Amendment Rights Of The Petitioner.

Unrestricted disclosure such as that called for by the preliminary injunction requiring production of *all* peti-

---

[6] In a similar situation, the Department of Justice has itself recognized that lists of contributors should not ordinarily be required. In *Levinson* v. *Attorney General,* 321 F. Supp. 984 (D. Pa. 1970), the government in connection with a grand jury investigation for mail fraud sought to subpoena the names of contributors to a defense fund for Eldridge Cleaver. After a motion to quash the subpoena of this information was denied, the government voluntarily withdrew its demand.

tioner's books and records amounts to an unreasonable search in violation of the Fourth Amendment. In proceedings analogous to these, courts have enforced administrative summons and warrants but only upon a showing that there is a legitimate purpose for the proposed search, and only after a careful balancing of the governmental interest involved and the deprivation of privacy resulting from enforcement. *Camara* v. *Municipal Court,* 387 U.S. 523; *See* v. *City of Seattle,* 387 U.S. 541.

In *United States* v. *Powell,* 379 U.S. 48, the Court articulated the minimal standards which the Internal Revenue Service must meet to obtain judicial enforcement of its subpoenas for the production of a taxpayer's books and records. The Court required that the Service show, among other things, that the investigation was being conducted pursuant to a legitimate purpose, and that the inquiry was relevant to that purpose.

No such showing has been made by the government in this case. The fact that the statute may not require a showing of purpose prior to the issuance of an order compelling disclosure does not, of course, excuse such a showing, which is constitutionally required. *United States* v. *Roundtree,* 420 F.2d 845 (5th Cir. 1969); *Stark* v. *Connally,* ..... F. Supp. ..... (D. Cal. Sept. 11, 1972, 41 USLW 2132).

It may be that in this case, the government would be entitled to a limited inspection of books and records relating to particular issues. At the hearing on the government's request for an injunction mandating disclosure of all records of the Committee, the petitioner proposed that if disclosure was to be ordered, it be tailored to disclose information relevant particular purposes in which the government had a legitimate interest. As the order stands now, however, the injunction mandates disclosure of every scrap of paper which petitioner may have.

This shotgun request for information is all the more questionable in view of the present investigation now being conducted by a grand jury in Texas. The coincidence of the demand for disclosure and the grand jury proceedings, the involvement of Attorney General Olson in both proceedings, the fact that the grand jury is inquiring into violations of the Foreign Agents Registration Act, the fact that subpoenas previously issued to the representatives of the Irish Northern Aid Committee in New York were withdrawn, making them fear that they were the targets of the investigation, have led the petitioner to believe that the documents sought were being requested for the purpose of gathering evidence for use in a criminal proceeding. Moreover the disclosure of the names of its contributors and identification of individuals on the mailing list might have exposed them to subpoena by the Texas grand jury. Until the Justice Department comes forward with a legitimate purpose for its present investigation and a limited demand for disclosure of information related to that purpose, the petitioner should not be required to produce all of its books and records.[7]

CONCLUSION

For these reasons, a writ of certiorari should issue to review the order of the Second Circuit affirming the order of the District Court.

Respectfully submitted,

VICTOR RABINOWITZ
30 East 42nd Street
New York, New York 10017
Counsel for Petitioner

September 27, 1972

[7] See the related line of cases in which the Internal Revenue Service has been denied enforcemnt of a subpoena when it was sought to obtain evidence in a criminal prosecution: *United States* v. *O'Connor*, 118 F. Supp. 248 (D. Mass. 1953); *United States* v. *Weingarden*, 333 F. Supp. 474 (D. Mich. 1971); and *United States* v. *Kyriaco*, 326 F. Supp. 1184 (D. Cal. 1971).

Appendix A

(Order of the Court of Appeals)

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-fourth day of August, one thousand nine hundred and seventy-two.

Present:

HON. WALTER R. MANSFIELD,

HON. WILLIAM H. TIMBERS,
Circuit Judges

HON. MURRAY I. GURFEIN,
District Judge

ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

IRISH NORTHERN AID COMMITTEE, 273 East 194th Street, New York, New York 10458,
Defendant-Appellant.

Appeal from the United States District Court of the Southern District of New York.

Appendix A

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged and decreed that the order of said District Court be and it hereby is affirmed with costs to be taxed against the appellant.

A. Daniel Fusaro
Clerk

By Vincent A. Carlin
Chief Deputy Clerk

Appendix B

(Opinion and Order of the District Court)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
72 CIV. 2863

ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA,
Plaintiff,

against

IRISH NORTHERN AID COMMITTEE, 273 East 194th Street, New York, New York 10458,
Defendant.

Appearances:

HON. WHITNEY NORTH SEYMOUR, JR.
United States Attorney for the
Southern District of New York
United States Courthouse
Foley Square
New York, N. Y. 10007
Attorney for Plaintiff
By: JOEL B. HARRIS, ESQ.
Assistant U. S. Attorney
Brian K. Ahearn, Esq.
Department of Justice

RABINOWITZ, BOUDIN & STANDARD, ESQS.
30 East 42nd Street
New York, N. Y.

FRANK DURKAN, ESQ.
50 Broad Street
New York, N. Y.
Attorneys for Defendant
By: VICTOR RABINOWITZ, ESQ.
K. Randlett Walster, Esq.
Frank Durkan, Esq.

Appendix B

BAUMAN, *D. J.*

The Attorney General of the United States has moved for a preliminary injunction pursuant to § 7(f) of the Foreign Agents Registration Act of 1938, as amended [1] ("the Act"), directing defendant Irish Northern Aid Committee to produce its books and records for inspection by officials charged with the enforcement of the Act.

The meaningful facts are not in dispute. The defendant, an unincorporated association doing business in the Bronx, registered as an agent of a foreign principal on or about January 29, 1971 pursuant to § 2 of the Act.[2] A supplemental statement was filed on January 29, 1972.

Some two months later, on March 28, in a letter emanating from the Internal Security Division of the Department of Justice, defendant's attention was directed to shortcomings in that statement and its failure to comply with other Department information requests. Forms were enclosed where they existed and information concerning defendant's representation of the Provisional Irish Republican Army was specifically requested. The letter went on to say:

> "... We have on numerous occasions advised you of your obligations under this section of the Act and we can only construe any further failures on your part to properly label and report any political propaganda disseminated by you as wilfull violations of the Act."

Frank Durkan, an attorney, replying on behalf of the Irish Northern Aid Committee on April 7, noted that when the defendant's relationship with the Provisional Irish Republican Army had been verified the information requested in the Department's letter of March 28 would be forthcoming. Talking to the point raised by the Justice Department, Mr. Durkan wrote of the membership:

> "... We have, however, impressed upon them the necessity of making every effort to live by and

adhere to those rules, no matter how onerous they may be or how unreasonable they may seem. The undersigned has volunteered to help them henceforth."

Durkan's response ended with an offer with respect to problems concerning compliance to try "to assist in obtaining the information you seek" if the Department would thereafter contact him.

A schedule of remittances was mailed by defendant to the Department on or about April 14, from which it appeared that between August 5, 1971 and January 10, 1972, $128,099 had been raised and distributed, all but $7,399 of which was delivered to one Joseph Cahill. On May 15, a letter signed "A. William Olson, Acting Assistant Attorney General, Internal Security Division—By: Justin J. O'Shea, Chief, Registration Section" pointed out that information long outstanding had not been received and that the schedule of remittances of April 14 was "incomplete" in that it failed, among other things, to show the names of the contributors and the sums contributed. No further information was thereafter forthcoming from the defendant.

On June 23, 1972, Special Agent Paul Donahue of the Federal Bureau of Investigation delivered to Matthew Higgins, the person who had signed defendant's schedule of remittances, a notice dated June 20, 1972 from Acting Assistant Attorney General Olson requiring that defendant's books and records be made available to Special Agents of the Federal Bureau of Investigation for inspection pursuant to § 5 of the Act.[3] Higgins said the books were not available but would be three days later. That day, June 26, Higgins told Special Agent Donahue that the books and records were not available and that the matter had been referred to the law firm of O'Dwyer and Bernstein (of which Durkan appears to be a member), as attorneys for the defendant.

Appendix B

On June 29, Donahue again contacted Higgins who, in his presence, telephoned Mr. Paul O'Dwyer. O'Dwyer asked that Donahue be put on. O'Dwyer stated that he was the defendant's attorney; that the notice of June 20 requiring the production of the defendant's books and records had been referred to him and that he had advised Higgins not to speak further with representatives of the Federal Bureau of Investigation. The phone was handed back to Higgins. After again speaking to O'Dwyer, Higgins said that after consulting with his attorney he was refusing to make the defendant's records available.

These facts, appearing from the affidavits and attached exhibits, are not in dispute. Thus, the defendant, an agent [4] of a foreign principal [5] within the meaning of the Foreign Agents Registration Act,[6] has failed to fully comply with the registration requirements of § 2 of the Act. In addition, it has refused to allow its books and records to be examined pursuant to the provisions of § 5 of the Act and Rules 500 and 501 promulgated thereunder.[7] As a result, the Attorney General now seeks to compel the defendant to comply with its statutory obligations.

In opposing this application, defendant points out that, on June 12, 1972 subpoenas were served on four of its prominent members and eight others requiring their appearance at a Federal grand jury investigation in Fort Worth, Texas the following week. That grand jury is investigating possible violations of the Act, gun control acts, conspiracy laws and other Federal criminal statutes and it has not been disputed that its investigation, at least in part, involves the shipment of arms and/or funds to the Provisional Irish Republican Army. From this, the defendant argues that the Government is misusing the Act to aid the criminal investigation pending in Texas.

The sole disputed fact then, is defendant's sheer speculation that the ". . . Texas action and the New York action

are one and the same. The instant action is but another prong of the Texas grand jury investigation—an investigation admittedly involving potential *criminal prosecution.*" (Affidavit of Frank Durkan.) The Court cannot understand how this position can be seriously maintained in view of the fact that defendant was advised in writing as early as March 28 of its continuing failures to comply with the Act. Indeed, as we have seen, Durkan, as far back as April 7, was solemnly assuring the Department that there would be compliance and that he would help in obtaining it. What we have here is a case in which defendant has delayed, stalled and finally refused to provide information required by law.

The frivolity of this argument is demonstrated by the fact that if the Texas grand jury wants the documents requested here its subpoenas will speedily collect them and more.

Add to this the Government's supplemental affidavit which quotes a conversation with Olson on July 5, 1972 in which he authorizes the following representations:

1. The Government's request to examine defendant's books and records was not for the purpose of submitting them to the grand jury in Texas.

2. The Government will not send defendant's books and records or copies to the grand jury.

Considering all these factors, the Court sees no necessity for a factual hearing. Cf. *Ross-Whitney Corp.* v. *Smith Kline & French Laboratories,* 207 F.2d 190 (9th Cir. 1953); *Walsh* v. *Local Board No. 10, Mt. Vernon, N.Y.,* 305 F.Supp. 1274 (S.D.N.Y. 1969). It would appear just another tactic to forestall the day when facts reportable at least six months ago will have to be produced. It seems to the Court that this may well be an attempt to checkmate the Government's legal quest for information by requiring the presence for interrogation of high level

Appendix B

Government officials engaged in one of the Nation's most sensitive security areas. It confronts them with the choice of submitting to the questions of the defendant or, in the alternative, of abdicating its statutory rights.

I do not decide in no case will such a hearing be had. But surely Congress intended that its basis be something more than a whim or the desire to frustrate the orderly administration of Government business when it said in § 618(f) of the Act". . . The proceedings shall be made a preferred cause and shall be expedited in every way."

The defendant argues that the Act violates the First Amendment insofar as it requires lists of the defendant's members and contributors.

Two of its officers seek to intervene in this action pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure in order to join in this constitutional objection.

Finally, the defendant argues that the scope of the inspection is too broad and that disclosure of the books and records will result in reprisals against such members and contributors.

The Government, on the other hand, contends that review of the defendant's books and records in order to ascertain defendant's true operations so that amended registration statements can be requested is necessary to discharge its responsibilities under the Act. Moreover, as we have seen, it has specifically represented that the defendant's books and records will not be sent to the Texas grand jury. With regard to the constitutional claim, the Government takes the position that the Act is fully compatible with the First Amendment.

I.

Defendant's arguments that the scope of the requested inspection is too broad and that provisions of the Act violate the First Amendment cannot be sustained. The

first is a straw man. It relies upon the contention that the Government has no right to inspect the personal correspondence contained in the defendant's files. The second, contesting the Government's right to demand disclosure of the names of its members and contributors, is founded on clearly distinguishable cases.

First, the Government made perfectly clear at the argument that it is seeking inspection only of those books and records which are relevant to defendant's registration under the Act. It is not asking for the personal correspondence of defendant's officials, nor books and records concerning other activities, if any, conducted by defendant.

Second, the Act does not specifically call for lists of members, but would require the names and addresses of those who paid or contributed money to the registrant, the amounts paid and the date of payment. In addition, it requires the names and addresses of all employees and agents of the registrant. To the extent that this information elicits membership information, defendant argues that the requested inspection abridges the First Amendment rights of its members and contributors and should be prohibited, citing *NAACP* v. *Alabama*, 357 U.S. 449 (1958) and its progeny.[8] There the Supreme Court held that the NAACP's membership lists were protected from disclosure by the First Amendment on a showing that disclosure would expose its members to economic reprisal, loss of employment, physical coercion, etc., *and* that the disclosure would have little or no bearing on the information the State was attempting to obtain. In short, the Court found no valid State purpose to balance against the abridgement of First Amendment rights.

No such showing appears here. Unlike *NAACP, supra*, there is a strong governmental interest supporting the disclosure sought and, in such cases, the Court has required production. See *Uphaus* v. *Wyman*, 360 U.S. 72 (1959); *Bar-*

enblatt v. *United States*, 360 U.S. 109 (1959). This is a case in which a balance between individual and governmental interests must be struck as in all cases when First Amendment rights are asserted to bar governmental interrogation. *Barenblatt, supra.* Here the balance tilts strongly in favor of the Government.

The purpose of the Act is to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature.[9] These disclosures offer the Government and our people the opportunity to be informed and therefore enable them to understand the purposes for which they act.

The Act is founded upon the indisputable power of the Government to conduct its foreign relations and to provide for the national defense and so falls within the inherent regulatory power of the Congress. *United States* v. *Peace Information Center*, 97 F.Supp. 255 (D.D.C. 1951). What is more fundamental then, than the authority to require every person acting as an "agent" of a foreign principal to file comprehensive information showing his agency activities. See *Uphaus* v. *Wyman, supra; Barenblatt* v. *United States, supra; Wilkinson* v. *United States*, 365 U.S. 399. Cf. *Communist Party of the United States* v. *Subversive Activities Control Board*, 367 U.S. 1 (1960).[10]

Whatever the factual infirmities discussed in the last cited case, it cannot be seriously argued that the sole or dominating purpose of the Act is to compel criminals to keep incriminating records to be used to convict the record-keepers in subsequent criminal trials. Its purpose is to meet the Government's need for records necessary to enforce its national defense and foreign relations policies.

And so, here disclosure of defendant's activities bears a substantial relation to legitimate interest which is asserted by the Government to justify the disclosure. The govern-

mental interest may fairly be said to outweigh any possible infringement of the First Amendment rights of the defendant's members or contributors.

The defendant engages in activities designed to promote the cause of one faction in the dispute currently raging in Northern Ireland. Its fund raising and propaganda activities may well be designed to influence American policy or, put most charitably, may result in serious complications for the Government in the conduct of its foreign affairs. In light of the magnitude of the public interests which the registration and disclosure provisions are designed to protect and the pertinence which registration and disclosure bear to the protection of those interests, I must reject the contention that the First Amendment prohibits the Attorney General from requiring the defendant to produce its books and records for inspection by the officials charged with enforcement of the Foreign Agents Registration Act.

II.

In view of the above disposition, it is clear that the motion of John McCarthy and Michael Flannery to intervene as defendants must be denied. They seek to intervene in order to raise constitutional objections to the Government's inspection.

However, it is apparent that these individuals have no standing to participate in this action in their individual capacities for three reasons. First, the Government is not seeking to inspect any of their personal correspondence. It seeks only to inspect defendant's books and records in connection with its registration under the Act, and its activities for or on behalf of its foreign principal.

Second, the constitutional rights asserted by these individuals cannot be abridged by defendant's production of its books and records. For it is well established that "[T]he official records and documents of [an] organization

that are held by [its officials] in a representative rather than a personal capacity cannot be the subject of the personal privilege against self-incrimination . . ." *United States* v. *White*, 322 U.S. 694, 699 (1944).

Finally, the books and records requested here are required to be kept by § 5 of the Act. Consequently, they fall within the "required records" doctrine, and are not subject to a claim of privilege. *Shapiro* v. *United States*, 335 U.S. 1 (1948); *United States* v. *Kaufman*, 429 F.2d 240 (2d Cir. 1970), *cert. denied* 400 U.S. 925 (1970).

The above constitute my findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

Accordingly, a preliminary injunction will issue. The Court directs that the defendant comply with the provisions of the Act and produce its books and records for inspection by officials charged with enforcement of the Act, including agents of the Federal Bureau of Investigation.

So Ordered.

Dated: August 7, 1972

Harold Banner
Arnold Bauman
U. S. D. J.

FOOTNOTES

[1] 22 U.S.C. § 618(f) (Supp. 1972), amending 22 U.S.C. § 618 (1938). The section provides that:

"(f) whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this subchapter, or regulations issued thereunder, or whenever any agent of a foreign principal fails to comply with any of the provisions of this subchapter or the regulations issued thereunder, or otherwise is in violation of the subchapter, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts or enjoining such person from continuing to act as an agent of such foreign principal, or for an order requiring compliance with any appropriate provision of the subchapter or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper. The proceedings shall be made a preferred cause and shall be expedited in every way."

[2] 22 U.S.C. § 612. The section provides in relevant part that:

"(a) No person shall act as an agent of a foreign principal unless he has filed with the Attorney General a true and complete registration statement and supplements thereto as required by this section and subsection (b) of this section or unless he is exempt from registration under the provisions of this subchapter. . . ."

[3] 22 U.S.C. § 615. Section 5 provides that:

"Every agent of a foreign principal registered under this subchapter shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions of this subchapter, in accordance with such business and accounting practices, as the Attorney General, having due regard for the national security and the public interest, may prescribe as necessary or appropriate for the enforcement of the provisions of this subchapter . . ."

Rule 500 promulgated thereunder, 28 C.F.R. § 5.500, requires the registrant to keep the following records:

"(1) All correspondence, memoranda, cables, telegrams, teletype messages, and other written communications to and

from all foreign principals and all other persons, relating to the registrant's activities on behalf of, or in the interest of any of his foreign principals.

(2) All correspondence, memoranda, cables, telegrams, teletype messages, and other written communications to and from all persons, other than foreign principals, relating to the registrant's political activity, or relating to political activity on the part of any of the registrant's foreign principals.

(3) Original copies of all written contracts between the registrant and any of his foreign principals.

(4) Records containing the names and addresses of persons to whom political propaganda has been transmitted.

(5) All bookkeeping and other financial records relating to the registrant's activities on behalf of any of his foreign principals, including canceled checks, bank statements, and records of income and disbursements, showing names and addresses of all persons who paid moneys to or received moneys from, the registrant, the specific amounts so paid or received, and the date on which each item was paid or received.

(6) If the registrant is a corporation, partnership, association, or other combination of individuals, all minute books.

(7) Such books or records as will disclose the names and addresses of all employees and agents of the registrant, including persons no longer acting as such employees or agents.

(8) Such other books, records, and documents as are necessary properly to reflect the activities for which registration is required."

Rule 501, 28 C.F.R. § 5.501, authorizes officials of the Federal Bureau of Investigation to inspect the books and records listed in Rule 500.

[4] § 1 of the Act, 22 U.S.C. § 611, provides that:

"(c) Except as provided in subsection (d) of this section, the term "agent of a foreign principal" means—

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed,

or subsidized, in whole or in major part by a foreign principal, and who directly or through any other person—

(i) engages within the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interests of such foreign principal; or

(iv) within the United States represents the interests of such foreign principal before any agency or offiical of the Government of the United States; and

(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationships, an agent of a foreign principal as defined in clause (1) of this subsection.

(d) The term "agent of a foreign principal" does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 2611 of Title 39, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subsciptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and it's officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in subsection (b) of this section, or by any agent of a foreign principal required to register under this subchapter."

[5] § 1 further provides that:

"(b) The term 'foreign principal' includes—

(1) a government of a foreign country and a foreign political party;

(2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States, and

(3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

[6] 22 U.S.C. § 611 *et seq.*

[7] 28 C.F.R. §§ 5.500 and 5.501.

[8] See e.g. *Gibson* v. *Florida Legislative Committee*, 372 U.S. 339 (1962), *Louisiana ex rel Gremillion* v. *NAACP*, 366 U.S. 293 (1961), *Bates* v. *City of Little Rock*, 361 U.S. 516 (1960).

[9] See generally, U.S. Code Cong. & Adm. News 2397 (1966).

[10] To the extent that *Communist Party* v. *Subversive Activities Control Board*, *supra* has been limited by subseqent decisions, see e.g., *Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70 (1965), it has been because of Fifth Amendment considerations and not First Amendment considerations.

Since the purpose of the Act is not to compel criminals to keep incriminating records, cases such as *Albertson* are totally inapposite.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statement	2
Argument	5
Conclusion	16

CITATIONS

Cases:

Bates v. *City of Little Rock*, 361 U.S. 516	8, 9
Burroughs and Cannon v. *United States*, 290 U.S. 534	13
Colonnade Catering Corp. v. *United States*, 397 U.S. 72	16
Donaldson v. *United States*, 400 U.S. 517	15
Gibson v. *Florida Legislative Committee*, 372 U.S. 539	8, 9
Louisiana ex rel. Gremillion v. *NAACP*, 366 U.S. 293	8, 9
NAACP v. *Alabama*, 357 U.S. 449	8, 9
Shapiro v. *United States*, 335 U.S. 1	16
United States v. *Biswell*, 406 U.S. 311	16
United States v. *Harriss*, 347 U.S. 612	13
United States v. *Powell*, 379 U.S. 48	15
Viereck v. *United States*, 318 U.S. 236	10

Constitution, statutes, regulation, and rule: Page

United States Constitution:
First Amendment 2, 5, 6, 7, 12, 13, 14
Fourth Amendment 2, 14, 16

Federal Corrupt Practices Act (now superseded by the Federal Election Campaign Act of 1971, 86 Stat. 20) 13

Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*:
Sec. 2, 22 U.S.C. 612 2
Sec. 2(a)(7), 22 U.S.C. 612(a)(7) 4, 11, 12
Sec. 2(b), 22 U.S.C. 612(b) 2, 6
Sec. 4, 22 U.S.C. 614 3
Sec. 5, 22 U.S.C. 615 ..... 4, 5, 10
Sec. 8(a), 22 U.S.C. 618(a) 15
Sec. 8(f), 22 U.S.C. 618(f) 4

Lobbying Act, 2 U.S.C. 261 *et seq.* 13
56 Stat. 248 9
56 Stat. 252 11
28 C.F.R. 5.201(e) 12
Rule 500(a), 28 C.F.R. 5.500(a) 6, 10

Miscellaneous:

Hearings on Activities of Nondiplomatic Representatives of Foreign Principals in the United States Before the Senate Committee on Foreign Relations, 88th Cong., 1st Sess., pts. 9 and 12 12
H. Rep. No. 1470, 89th Cong., 2d Sess., p. 2 9
S. Rep. No. 143, 89th Cong., 1st Sess., p. 1 ..... 9, 10
S. Rep. No. 875, 88th Cong., 2d Sess., p. 5 12

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-521

IRISH NORTHERN AID COMMITTEE, PETITIONER

v.

ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The order of the court of appeals affirming the district court's disclosure order (Pet. App. A) was entered without an opinion. The opinion of the district court (Pet. App. B) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on August 24, 1972. The petition for a writ of cer-

tiorari was filed on September 28, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the First Amendment bars the government from requiring a registered foreign agent to make available for inspection its books and records, including a list of its contributors, as required by the Foreign Agents Registration Act.

2. Whether the compelled disclosure of books and records that petitioner is required by statute to maintain and produce on demand for government examination violates the Fourth Amendment.

STATEMENT

Petitioner, the Irish Northern Aid Committee, is an unincorporated association with headquarters in New York City. In January 1971, it registered as an agent of a foreign principal, the Northern Aid Committee of Belfast, Ireland, by filing with the Department of Justice a registration statement, pursuant to Section 2 of the Foreign Agents Registration Act, 22 U.S.C. 612. It has since filed with the Department semi-annual Supplemental Statements as required by the Act (22 U.S.C. 612(b)); these statements show substantial disbursements to its foreign principal during the covered six-month periods, but they do not claim or report any receipts.

Shortly after filing the second such Supplemental Statement in March 1972, petitioner was advised by

the Department that the submitted information was incomplete and failed to comply with the Act.[1] Various deficiencies were specifically noted, including: (a) the failure to list as a foreign principal the Provisional Wing of the Irish Republican Army; (b) the failure to reveal monies that had been received for or on behalf of its foreign principal (the disclosed disbursements for this period were admittedly over $128,000); and (c) the failure to satisfy the Act's format and filing requirements with respect to petitioner's political propaganda (22 U.S.C. 614).

In response, petitioner's counsel at the time, Frank Durkan, informed the Department on April 7, 1972, that the requested information would be forthcoming as soon as petitioner's relationship with the Provisional Irish Republican Army had been verified. In the letter, he offered to assist the government in obtaining the other information sought and raised no objection, constitutional or otherwise, to its production. More than two months passed and still the requested information was not submitted.[2]

---

[1] This Statement covered the six-month period ending January 29, 1972; it was received by the Department on March 21, 1972, almost a month after the 30-day statutory deadline.

[2] On April 14, 1972, petitioner mailed to the Department a schedule of remittance showing that almost all of the $128,099 it had declared as disbursements in its March 1972 Supplemental Statement had been remitted to one Joseph Cahill, almost entirely in cash. In a letter dated May 15, 1972, seeking to ascertain whether petitioner's relationship with the Provisional Wing of the Irish Republican Army had yet been verified, the Department advised petitioner that the April 14

On June 23, 1972, a Special Agent of the F.B.I. hand-delivered to petitioner's representative a letter from then Acting Assistant Attorney General A. William Olson, advising that agents of the F.B.I. had been directed to examine petitioner's books and records, pursuant to their authority under Section 5 of the Act, 22 U.S.C. 615. The agent was told that the books and records were not then available, but that the material would be made available for inspection on June 26, 1972. On that date, however, the agent was advised by petitioner's representative that the matter had been referred to its lawyers and the books and records would not be produced.

The government then instituted the present suit in the United States District Court for the Southern District of New York, seeking a preliminary and permanent injunction requiring petitioner to comply with the Act and produce its books and records for inspection.[3] Petitioner opposed the relief on the grounds (1) that the action was impermissibly designed to gather evidence for a grand jury then sitting in Fort Worth, Texas,[4] (2) that disclosure of records

---

schedule of remittance was incomplete since it failed to enumerate petitioner's contributors and the sum each contributed, as required by Section 2(a)(7) of the Act, 22 U.S.C. 612(a)(7). No list of contributors has been furnished.

[3] No attempt was made to enjoin petitioner's activities on behalf of its foreign principal pending its compliance with the Act, as is authorized by the statute. See 22 U.S.C. 618(f).

[4] A federal grand jury was impanelled in Fort Worth, Texas, on May 2, 1972, to investigate "possible violations of the

would reveal the identity of members and contributors, exposing them and their families to reprisal, and (3) that insofar as the Act requires disclosure of the information requested, it violates the First Amendment. The district court (Pet. App. B) rejected petitioner's arguments and held that the government was entitled to injunctive relief; it ordered petitioner to produce its books for inspection by authorized agents (Pet. App. B). The court of appeals affirmed without an opinion (Pet. App. A).[5]

ARGUMENT

1. Petitioner contends here, as below, that its books and records, which it is by statute required to "keep and preserve" and to make available "at all reasonable times to the inspection" of an appropriate government official, cannot be opened to government examination without undue interference with First Amendment rights.[6] Although petitioner has con-

---

[Foreign Agents Registration] Act, gun control acts, conspiracy laws and other Federal criminal statutes," including "the shipment of arms and/or funds to the Provisional Irish Republican Army" (Pet. App. 6A). On June 12, 1972, four of petitioner's members were subpoenaed to appear before the grand jury. And see n. 8, *infra*.

[5] On October 10, 1972, this Court granted petitioner's application for a stay pending disposition of the present petition.

[6] Section 5, 22 U.S.C. 615, provides in pertinent part:

> Every agent of a foreign principal registered under this Act shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is

sistently asserted that it is constitutionally immune from having to make *any* of its records available, it now seeks to justify its unqualified refusal to permit an examination by pointing to a single category of information that it considers protected by the First Amendment—its list of contributors. The disclosure of this list, it is said, "would markedly burden [the contributors'] First Amendment right to freedom of association" (Pet. 14).[7] This alone is offered as basis

---

required under the provisions of this Act, in accordance with such business and accounting practices, as the Attorney General, having due regard for the national security and the public interest, may by regulation prescribe as necessary or appropriate for the enforcement of the provisions of this Act * * *. Such books and records shall be open at all reasonable times to the inspection of any official charged with the enforcement of this Act. It shall be unlawful for any person willfully to conceal, destroy, obliterate, mutilate, or falsify, or to attempt to conceal, destroy, obliterate, mutilate, or falsify, or to cause to be concealed, destroyed, obliterated, mutilated, or falsified, any books or records required to be kept under the provisions of this section.

Rule 500(a), 28 C.F.R. 5.500(a), promulgated under Section 5, enumerates certain books and records which registrants are required to keep and preserve. These include correspondence and other written communications relating to the registrant's activities on behalf of its foreign principal, minute books, records of persons to whom political propaganda has been transmitted and financial records including bank statements and contributor lists.

[7] Petitioner's concern with the First Amendment rights of its alleged contributors is puzzling, since in its various Supplemental Statements filed with the Department of Justice under 22 U.S.C. 612(b), including the most recent filing on July 29, 1972, petitioner has asserted that it has received *no*

for sustaining petitioner's general refusal to perform its statutory obligation to produce its books and records. But the production order of the district court cannot be sidestepped by a reformulation of the issue in this Court. Indeed, such an effort amounts to a tacit admission that no First Amendment interests would be implicated by disclosure of the bulk of the information sought by the government.

Nor does petitioner stand on firmer constitutional footing when the focus of inquiry narrows to the contributor lists. Petitioner has not been asked to disclose the names of its *members*. And, to the extent that there may be some right of "associational privacy" in a mere financial contributor, inhering in that status alone and without regard to any continuing affiliation, petitioner has made no showing that any First Amendment rights of such people in aiding the petitioner would be offended by disclosing their contributions to the government under the statute.[8]

---

contributions. Instead, the statements indicate that it raises money "by concerts, dances, cocktail parties, etc. throughout the United States * * *." The inconsistency between its denial that it receives contributions and its invocation of the First Amendment protection of its so-called "contributor lists" has never been explained.

[8] The only attempt to show that there might be *any* adverse consequences from such disclosure is found in the affidavit of Michael Flannery, an official of petitioner who sought unsuccessfully to intervene. His affidavit averred: that a witness before the Fort Worth grand jury, who had been committed to jail for contempt, had lost his job; that three nurses from a Fort Worth hospital who picketed the court house in that city had lost their jobs; and that a person whose subpoena to testify in Fort Worth had been cancelled had a brother

Unlike the membership-list cases on which petitioner relies, the record here does not reveal a local climate which suggests either threatened or actual harassment of anyone associated with petitioner; nor is there any cause to fear that compulsory disclosure will lead to interference with the assertion of legitimate grievances. Compare *NAACP* v. *Alabama*, 357 U.S. 449, 462-463; *Gibson* v. *Florida Legislative Committee*, 372 U.S. 539, 548 n. 3, 556-557; *Bates* v. *City of Little Rock*, 361 U.S. 516, 521-522; *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U.S. 293, 296.[9]

Moreover, the disclosure of contributor lists by foreign agents, such as petitioner, is grounded on precisely the type of significant government interest that this Court found wanting in the cases just cited.[10] The Foreign Agents Registration Act of

---

in jail in Belfast. But none of these rather remote events shows any real possibility of reprisal against contributors of petitioner.

[9] These cases all dealt with demands by certain state or local officials for membership lists of the National Association for the Advancement of Colored People. This Court specifically noted that the organization had made available to the public officials all other records and information except the membership lists, thus establishing the good-faith nature of its specific claim. See *NAACP* v. *Alabama*, *supra*, 357 U.S. at 463-464; *Gibson* v. *Florida Legislative Committee*, *supra*, 372 U.S. at 542-543; *Bates* v. *City of Little Rock*, *supra*, 361 U.S. at 519-521. By contrast, the district court in this case explicitly found that "here is a case in which [petitioner] has delayed, stalled, and finally refused to provide information required by law" (Pet. App. 7A).

[10] In each case the Court found that there was no significant government interest that could honestly be said to justify

1938 is basically a reporting and disclosure statute. As expressed in the preamble to its 1942 amendments (56 Stat. 248):

> It is hereby declared to be the policy and purpose of this Act to protect the national defense, internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their associations and activities.

When the Act was amended in 1966 to provide, *inter alia*, for the granting of injunctive relief to compel compliance, the Senate Foreign Relations Committee reiterated that the basic objective of the legislation was "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political."[11] Congress' overriding con-

---

a demand for disclosure of the membership lists in light of the serious and demonstrable consequences for the right of association that would follow from any compelled disclosure. See *NAACP* v. *Alabama*, *supra*, 357 U.S. at 463-464; *Gibson* v. *Florida Legislative Committee*, *supra*, 372 U.S. at 546, 551; *Bates* v. *City of Little Rock*, *supra*, 361 U.S. at 525-527; *Louisiana* v. *NAACP*, *supra*, 366 U.S. at 296-297.

[11] S. Rep. No. 143, 89th Cong., 1st Sess., p. 1 (1965). The House Judiciary Committee offered an identical explanation. H. Rep. No. 1470, 89th Cong., 2d Sess., p. 2 (1966).

cern was that the public "be informed as to the identities and activities of such persons and so be better able to appraise them and the purposes for which they act." S. Rep. No. 143, 89th Cong., 1st Sess., p. 1 (1965). As Mr. Justice Black explained in his dissenting opinion in *Viereck* v. *United States*, 318 U.S. 236, 251: "Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment." [12]

There can be no doubt that Congress contemplated public disclosure of information about contributions. The Act specifically requires disclosure of the books and records that the Attorney General by rule requires to be maintained (22 U.S.C. 615). Rule 500(a)(5), 28 C.F.R. 5.500(a)(5), issued by the Attorney General under this authority, requires a registrant to maintain "records of income • • • showing names and addresses of all persons who paid moneys to • • • and the date on which each item was paid • • •." Statutory authority for this rule is two-fold.

First, the act defines an "agent of a foreign principal" to include a person who, among other things, "within the United States *solicits*, *collects*, disburses, or dispenses, *contributions*, loans, money, or other things of value for or in the interest of such foreign principal • • •" (emphasis added). Second,

---

[12] In his dissenting opinion, joined by Justice Douglas, Justice Black argued against an unduly narrow construction of the Act; the provision the Court interpreted was later expanded by Congress.

Section 2(a)(7), 22 U.S.C. 612(a)(7), provides for disclosure of information about contributions.[13] Petitioner argues that the latter provision relates only to those persons, other than a foreign principal, who are so closely related to the foreign principal that the registrant can be deemed to act as their "agent" also (Pet. 13). But the legislative history of Section 2(a)(7) makes it clear that Congress did not intend the provision to be read so narrowly.[14]

---

[13] Section 2(a)(7) provides for the disclosure of: "The name, business, and residence addresses, and if an individual, the nationality, of any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act under such circumstances as require his registration hereunder; the extent to which each such person is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party or by any other foreign principal; and *the nature and amount of contributions*, income, money, or thing of value, *if any, that the registrant has received during the preceding sixty days from each such person in connection with any of the activities referred to in clause (6) of this subsection, either as compensation or for disbursement or otherwise and the form and time of each such payment and from whom received.*" (Emphasis added.)

[14] As originally enacted, the Section called for disclosure about "any person who has within the preceding sixty days contributed or paid money or anything of value to the registrant * * * and the amount or value of the same" (56 Stat. 252; emphasis supplied). When Congress held hearings on the Act prior to drafting the 1966 amendments, it was brought to the attention of the Senate Committee on Foreign Relations that foreign agents were avoiding disclosure of contributions by operating through unregistered conduit organizations. Payments were being made to a conduit, rather than to the regis-

Whether this congressional requirement unduly intrudes upon First Amendment values depends, as this Court has so often recognized (see n. 10, *supra*), on whether the government's need for the information sought is sufficiently compelling to outweigh the

---

trant, and then the contributions were being passed through the registered foreign agent to another conduit, which might or might not eventually forward them to the foreign principal. Thus, while the registered agent would report its disbursements, it would make no disclosure with respect to the source of the money or the use to which it was being put. See Hearings on Activities of Nondiplomatic Representatives of Foreign Principals in the United States Before the Senate Committee on Foreign Relations, 88th Cong., 1st Sess., pts. 9 and 12 (1963), subsequently referred to as "Hearings."

Such a practice was considered by the Committee to be "inimical to the interests of the United States," and it recommended that it "should be dealt with in the new legislation." S. Rep. No. 875, 88th Cong., 2d Sess., p. 5 (1964). As Chairman Fulbright observed: "* * * not even the conduit, much less the Department of Justice or the Congress, knows the origin of the money and what it is used for in circumstances of this kind." Hearings, pt. 12, p. 1711. "The whole purpose of the registration is to reveal what has been done, what is being done by a foreign agent," he stated, "and, if they are to be allowed to use innumerable conduits or other organizations, who do the work, it completely nullifies the objective, thwarts the objective, of the Foreign Agents Registration Act * * *." *Id.* at 1718.

This is essentially what prompted the amendment of Section 2(a)(7) to its present form in 1966—not to narrow its coverage, as petitioner seems to suggest, but to expand it. The new language was intended to require disclosure of "the nature and amount of contributions" *received by* the foreign agent, whether directly or indirectly, from "any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act * * *" (22 U.S.C. 612(a)(7)). And see 28 C.F.R. 5.201(e).

interest of the individual in anonymity. Here, the courts below struck the proper balance. As the district court observed, the Act informs the government about the motives and activities of persons operating to manipulate American foreign policy, perhaps complicating the government's conduct of delicate foreign relations. It also brings to public attention—if its requirements are honored—the true connection, whether foreign or domestic, of a group engaged in distributing political propaganda or supporting a foreign political faction, and opens up its financial and organizational activities to public scrutiny. Thus, the American public is in a better position to make an informed choice whether to support the organization, by membership or contribution.[35]

---

[35] These interests are similar to those protected by the reporting and disclosure requirements of other federal statutes that this Court has upheld against constitutional challenge. See, *e.g.*, *Burroughs and Cannon* v. *United States*, 290 U.S. 534, 545-548, sustaining the Federal Corrupt Practices Act (now superseded by the Federal Election Campaign Act of 1971, 86 Stat. 20) as protecting an important government interest. And see *United States* v. *Harriss*, 347 U.S. 612, 625, sustaining the domestic Lobbying Act, 2 U.S.C. 261 *et seq.*, against a First Amendment challenge.

In *Harriss* the Court observed, in dealing with legislation regulating organizations which, for hire, attempt to influence policy, that Congress and the public have a vital interest in learning "who is being hired, who is putting up the money, and how much" (347 U.S. at 625). In balancing the interest of the public to know against the First Amendment interest of those required by statute to report and disclose information similar to the information sought in the present case, the Court considered the latter to be "too remote to require striking down a statute which on its face

Petitioner engages in activities to promote the cause of one of the factions in the violent disturbances currently raging in Northern Ireland. The government and the people of the United States have an overwhelming interest in full and candid disclosure of petitioner's activities in this regard. To the limited extent that an examination of its books and records, including the contributor lists, might intrude on associational privacy, that intrusion is in this instance fully justified, especially since there has been no showing here that disclosure would adversely affect the ability of the organization and its members to pursue legitimate ends protected by the First Amendment.

2. Petitioner also contends that the government's request for information is in essence an impermissible administrative "search" under the Fourth Amendment, because the inquiry is for an illegitimate purpose and amounts to a deprivation of "privacy" that cannot be justified by any countervailing government interest.

This argument is insubstantial. It rests primarily on the contention that the books and records sought in this suit are actually being requested for use in connection with a grand jury investigation in Fort Worth, Texas. But the government explicitly stated in the district court, through affidavits, that its purpose in filing this suit was not to secure evidence

---

is otherwise plainly within the area of congressional power and is designed to safeguard a vital national interest" (347 U.S. at 626).

for the grand jury (Pet. App. 8A-9A). Indeed, the measured and deliberate efforts to secure from petitioner the information that it is obliged by the Act to make available long predated the impanelling of the Fort Worth grand jury. Plainly, if that investigative body wanted to look at petitioner's books and records, it could subpoena them itself. Moreover, had the government wanted to prosecute petitioner, it could have proceeded directly to that end, since petitioner's untimely and inadequate filings, and its refusal to permit access to records, constitute clear criminal violations under 22 U.S.C. 618(a). Instead, the government has chosen to exercise the least obtrusive remedy that Congress has made available to vindicate the policies of the Act, and on this record it can hardly be accused of bad faith.[16]

We also point out that what the government seeks here is enforcement of a statutorily-authorized access to books and records that Congress has required to be maintained by a person who decides to engage in the long controlled and closely regulated activities of

---

[16] Petitioner's reliance on Internal Revenue summons cases to require some additional showing of good faith by the government in this proceeding is misplaced. Those decisions depend on a construction of the Internal Revenue Code, and the Court has held in that context that it is the party resisting enforcement who has the burden of showing abuse of process. *United States* v. *Powell*, 379 U.S. 48, 58. As we have indicated, petitioner has not come close to making such a showing in this case. In any event, there is no constitutional barrier to the use of civil investigative tools to inquire into what may be criminal conduct, where, as here, there has been no recommendation of a criminal prosecution. *Donaldson* v. *United States*, 400 U.S. 517, 535-536.

a foreign agent. As we earlier explained, Congress made the considered judgment that production of such information is essential to very significant and legitimate government and public interests. In these circumstances, the Fourth Amendment affords petitioner no grounds for refusing to perform its obligation under the Act's disclosure provisions. See *Shapiro* v. *United States*, 335 U.S. 1, 32, 34; *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72, 77; *United States* v. *Biswell*, 406 U.S. 311, 314-317.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

A. WILLIAM OLSON,
Assistant Attorney General.

ROBERT L. KEUCH,
THADDEUS B. HODGDON,
Attorneys.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972 488804 302

DEC 1 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-521

IRISH NORTHERN AID COMMITTEE,
Petitioner,

vs.

ATTORNEY GENERAL OF THE UNITED STATES,
Respondent.

REPLY BRIEF FOR PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

VICTOR RABINOWITZ
30 East 42nd Street
New York, New York 10017
Attorney for Petitioner

Of Counsel:

K. RANDLETT WALSTER
30 East 42nd Street
New York, New York

FRANK DURKAN
50 Broad Street
New York, New York

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-521

IRISH NORTHERN AID COMMITTEE,

Petitioner,

vs.

ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

REPLY BRIEF FOR PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

1. With respect to the issue of disclosure of contributors' names, there should be no doubt that the First Amendment right of associational privacy protects the identity of contributors as well as members, *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539; *Bates* v. *City of Little Rock*, 361 U.S. 516.

This right of associational privacy does not, as the Attorney General suggests, depend upon the existence of a demonstrably hostile and violent climate. Inquiries into political affiliation have a general inhibitory effect on freedom of association and as a result, such inquiries must be permitted only when unquestionably necessary. *Pollard* v. *Roberts*, 283 F.Supp. 248 (D. Ark. 1968). Moreover, the recent adoption of the *Gibson* test in *Branzburg* v. *Hayes*, 408 U.S. 665, 700, shows that *Gibson* should be generally applied whenever a careful balance must be drawn between

the government's interest in disclosure and individuals' First Amendment rights.

Applying the *Gibson* test to the facts of this case, the government would be required to demonstrate a substantial relationship between a compelling and overriding governmental purpose and the disclosure of organizational affiliation. However, the government has made no effort to show any justification, either compelling or otherwise, for requiring disclosure and thus inhibiting the exercise of rights protected by the First Amendment.

The primary purpose of the Foreign Agents Registration Act is to assure public disclosure of the identity and activities of those required to register as agents of a foreign principal [Br. Opp. pp. 9-10]. In implementing this objective, Congress did *not* require the disclosure of names of all contributors to registrants.[1] Congress' failure to

---

[1] The Act itself does not call for the disclosure of contributors' names, and the Attorney General relies on its own *ipse dixit* for such a requirement. The government quite candidly admits that the justification for compelling disclosure of names derives from the general grant of authority to the Attorney General to require the keeping of records and to permit their inspection.

The Attorney General justifies its own requirement of disclosure of names of contributors by two sections of the Act, but whether the Act could possibly be interpreted to permit the Attorney General's rule of disclosure is a far different question from whether disclosure is mandated in connection with an overriding and compelling governmental purpose.

Moreover, the two sections on which the Attorney General relies are questionable authority for its rule of disclosure. Without any explanation, the Attorney General cites the section of the Foreign Agents Registration Act which defines a foreign agent as one who, *inter alia*, collects contributions for its principal [Br. p. 10]. But this section merely identifies those agents who must register and is irrelevant to the issue at hand.

The Attorney General also relies on Section 2(a)(7) to justify the disclosure requirement [Br. p. 11]. However, the Attorney General admits that this section was enacted to deal with the problem of conduit organizations [Br. p. 11 fn. 14] and all the relevant

so provide can hardly be regarded as an oversight, to be corrected by the Attorney General's rules. Both the 1938 Act as amended and the 1966 Act deal with the general subject of finances and they specifically require elaborate details as to income from foreign principals and disbursements. The 1966 amendment of Section 2(a)(7) only requires the names of contributors who were conduits, *i.e.*, those who were "not themselves foreign principals, [but] who are so related to a foreign principal that their agents were engaged in political activities in the interests of the principal are required to register under the act." Sen. Rept. #143, p. 10, 89th Cong., 1st Sess. (1965) Congress' determination not to require the names of individual contributors demonstrates a concern with First Amendment rights which the Attorney General evidently does not share.

Furthermore, there is no substantial relationship between the articulated purposes of the Act (assuming them to be overriding and compelling) and disclosure of the names of contributors. While disclosure of a foreign agent's identity and activities would permit "the American public [to be] in a better position to make an informed choice whether to support the organization, by membership or contribution" [Br. Opp. p. 13], the disclosure of the names of those who do choose to support the organization is plainly irrelevant. How is the American public better able to make an informed choice whether to support an organization by disclosure of the names of every person who may have contributed $5, $10 or $25 to it?

The Attorney General cannot gloss over this obvious defect and avoid the demonstration of necessity required under the *Gibson* test by urging that the sensitive area of

---

[1](Cont'd) committee reports limit its function to meeting that problem: Sen. Rept. #875, p. 10, 88th Cong. 2d Sess. (1964); Sen. Rept. #143, p. 10, 89th Cong. 1st Sess. (1965); House Rept. #1470, p. 8, 89th Cong. 2d Sess. (1966).

foreign relations requires the disclosure of contributors' names. The rule of *Gibson* does away with *a priori* categories to which First Amendment rights must yield. Moreover, even if protection of foreign relations were a primary focus of the Act, the unsupported assertion that our foreign relations requires the disclosure of contributors' names is no excuse for a violation of the Constitution, *United States* v. *Robel*, 389 U.S. 258; *Aptheker* v. *Secretary of State*, 378 U.S. 500.

2. In addition to demanding the names of contributors to the Irish Northern Aid Committee, the Attorney General seeks to inspect *all* the Committee's books and records, pursuant to the Foreign Agents Registration Act itself and the preliminary injunction of the District Court of which the Committee seeks review. Such unlimited inspection would violate the Fourth Amendment protection against unreasonable searches and seizures. Moreover, in view of the pending Texas grand jury investigation, the Committee realistically fears that this is an attempt to obtain evidence for a criminal proceeding.

The Attorney General attempts to minimize the claim that this inspection may be used to gather evidence for a criminal proceeding. However, petitioner's concern cannot be so easily allayed. The Committee should not be required to accept the assurances offered in the district court that the government's "purpose in filing this suit was not to secure evidence for the grand jury" (Br. Opp. pp. 14-15). It is no secret that the prosecuting arm of the government does not always adhere to its representations. See *e.g. Giglio* v. *United States*, 405 U.S. 150; *Santobello* v. *New York*, 404 N.Y. 257.

Nor is the fact that the Texas grand jury could subpoena the New York records of the Committee particularly relevant. The grand jury has thus far chosen not to do so, and we need not speculate as to whether it may and

under what conditions. If such a subpoena were presented, the Committee could raise the First and Fourth Amendments claims presented here. Other defenses might be available as well. For example, the government has elsewhere admitted that one of the counsel for the witnesses in Ft. Worth has been "overheard" as the result of a wiretap, *Gelbard* v. *United States*, 408 U.S. 41.

The Attorney General also suggests that the "required records" doctrine justifies inspection of all petitioner's papers [Br. Opp. p. 15-16]. But even if applicable, that doctrine has never permitted unlimited inspection. Rather, it has approved inspections "carefully limited in time, place and scope." *United States* v. *Biswell*, 406 U.S. 311, 315. See also *Shapiro* v. *United States*, 335 U.S. 1, 32-33.

Respectfully submitted, etc.

VICTOR RABINOWITZ
30 East 42nd Street
New York, New York 10017
Attorney for Petitioner

Of Counsel

K. RANDLETT WALSTER
FRANK DURKAN

Dated: New York, New York
November 28, 1972